

Exhibit 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

| | | |
|--------------------------------|---|--------------------|
| GWACS ARMORY, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case Number |
| |) | 20-cv-0341-CVE-SH |
| KE ARMS, LLC, RUSSELL PHAGAN, |) | BASE FILE |
| SINISTRAL SHOOTING, |) | |
| TECHNOLOGIES, LLC, BROWNELLS, |) | Consolidated with: |
| INC., and SHAWN NEALON, |) | Case No. |
| |) | 21-CV-0107-CVE-JFJ |
| Defendants. |) | |
| |) | |
| and |) | |
| |) | |
| KE ARMS, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| GWACS ARMORY, LLC, GWACS |) | |
| DEFENSE INCORPORATED, JUD |) | |
| GUDGEL, RUSSELL ANDERSON, DOES |) | |
| I through X, and ROE |) | |
| CORPORATIONS I through X, |) | |
| |) | |
| Defendants. |) | |

THE DEPOSITION OF MICHAEL ERIC KENNEY,
taken on the 27th day of October, 2021, between the hours
of 8:34 a.m. and 4:54 p.m., on behalf of the Plaintiff
GWACS, pursuant to Federal Rules of Civil Procedure, at
the law offices of Hall, Estill, Hardwick, Gable, Golden &
Nelson, 320 South Boston Avenue, Suite 200, Tulsa,
Oklahoma, before Linda Fisher, CSR-RPR, and Notary Public
in and for the State of Oklahoma.

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1 Q. Do you know the dealer's name?

2 A. I'd have to check the record to be specific.

3 Q. Do you know where that dealer was located?

4 A. Not off the top of my head.

5 Q. Do you know what you paid for that weapon?

6 A. I believe it was \$45,000.

7 Q. Is that a fully automatic weapon?

8 A. Yes, it is.

9 Q. Have you shot it?

10 A. No.

11 Q. I may have already asked you this. I apologize
12 if I have. Did Russell Phagan work for you when you
13 purchased it?

14 A. Yes, he did.

15 Q. How did you find out about Colt's polymer lower
16 receiver?

17 A. They have been in discussions when we -- from
18 almost day one with Russell. He's been talking polymer
19 since the second I met the kid.

20 Q. What did -- what did he talk about?

21 A. Everything. I mean, pretty much everything.
22 It's kind of a passion for him; so...

23 Q. Did he tell you about his involvement in
24 developing the CAV-15?

25 A. The original, yes.

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1 Q. what did he tell you about that?

2 A. Like I said, pretty much every detail you can
3 imagine. The kid is pretty proud of his work.

4 Q. Do you think he's done good work?

5 A. He has.

6 Q. Did he tell you what went into the process of
7 making those lowers?

8 A. Yes, he did.

9 Q. Did he tell you that after he went to work for
10 you?

11 A. We've started discussions. He worked for us as
12 a consultant doing marketing for a while, so -- prior. So
13 we had discussions all along.

14 Q. When did he start working for you doing
15 marketing?

16 A. It would have been around 2015.

17 Q. And so he was a consultant doing marketing
18 around 2015 initially?

19 A. Correct.

20 Q. Did you know Mr. Phagan before 2015?

21 A. I can't remember exactly when we first met when
22 we were introduced. He was a writer for a number of the
23 publications. So I mean, I was aware of him.

24 Q. Is it safe to say any of these discussions that
25 you had with him about these polymers would have been in

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1 2015 or later?

2 A. Yeah, I mean, --

3 Q. So Russell Phagan, you said, was telling you
4 about the CAV-15 polymer lowers. Did he tell you how much
5 it cost to produce them?

6 A. I'm sure we went over a number of the details.

7 Q. Did he tell you about the speed and efficiency
8 of the manufacturing process?

9 A. Yes, he did.

10 Q. Did he want you to manufacture polymer lower
11 receivers at KE Arms?

12 A. He felt that it would be a great thing going
13 into it, you know, a rush to be able to make lowers faster
14 than you can with the billet process. And knowing Fostick
15 (phonetic), I would agree with him.

16 Q. When was that rush?

17 A. What's that?

18 Q. When was that rush you just referenced?

19 A. There have been a number of them since we
20 started. But the one in particular would be the 2016
21 election.

22 Q. So 2016 time frame, Mr. Phagan was --

23 A. Prior to.

24 Q. -- encouraging you to --

25 A. Well, everybody was getting ready for it. And

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1 A. Correct.

2 Q. When did you create the polymer variant for the
3 KE-9?

4 A. Started that right after we worked on the
5 KP-15.

6 Q. What are the differences between the KE-9, the
7 polymer KE-9, and the KP-15?

8 A. Materials basically. They're mirror images.
9 We always used our design for our competition lowers in
10 the polymer versions and then attached the fixed buttstock
11 to it.

12 Q. So the KE-9 is essentially the same lower
13 receiver but has a different magazine or magwell, and --

14 A. Well, the KE-9 if you look at our -- if you
15 look at our -- if you look at the KP-15, the KP-15 is a
16 derivative of our billet competition lower. So all the
17 features and things in that are morphed into a polymer
18 product. We did the same thing with the KE-9. We've had
19 great acceptance for our alloy lowers. People like the
20 way they feel, the magwell. It's, you know, been well
21 received. So when we converted those to the polymer, we
22 kept all the same design features.

23 Q. So the KE-15, it has a permanently attached
24 buttstock on it?

25 A. No. Like I said, we -- as you asked for the

1 design, what we did was we morphed our lower into a
2 standard buttstock. And we actually used a derivative of
3 a pistol grip that we liked that had a -- you know, a more
4 aggressive sweep than the standard.

5 Q. On your aluminum lowers, is the pistol grip
6 integrated into it?

7 A. Bolts on.

8 Q. Is that what makes it a monolithic lower
9 receiver is that it's got the pistol grip and the
10 buttstock attached permanently?

11 A. Depends on your definition of monolithic. But
12 I guess, I don't know exactly what you're asking.

13 Q. What do you consider a monolithic lower
14 receiver?

15 A. Well, I'm saying if you are using it as a --
16 yes, it is a one piece, I guess. But I don't know if
17 that's a definition of it; but...

18 Q. Yeah, I just need -- I was just asking yours
19 essentially.

20 A. Yeah.

21 Q. That was the definition I was using. But
22 that's why I asked how you would define it.

23 A. Okay.

24 Q. So on your KE-15, the lower receiver does not
25 have a permanently attached pistol grip, right?

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1 A. Correct.

2 Q. And it does not have a permanently attached
3 buttstock, right?

4 A. Right.

5 Q. So the KP-15, which is the polymer, it has the
6 permanently attached pistol grip?

7 A. Correct.

8 Q. And it has the permanently attached buttstock?

9 A. Correct.

10 Q. So on the design that you were talking about
11 that you used, your original design, --

12 A. Uh-huh.

13 Q. -- what -- describe for us what the lower
14 receiver consists of.

15 A. The -- in the -- which design?

16 Q. In the KE-15.

17 A. In the KE-15? It's -- I mean, design features,
18 it's pretty much every AR has an identical variant. It's
19 kind of tough to get around how an AR functions and works,
20 you know, when you're talking about all the pins and
21 things that have to be there.

22 So those all have to kind of go in first. And the
23 rest of it is all, you know, whether -- you know, the
24 function is identical. So there's not a lot you can do.
25 In our competition, we flared the magwells. You know, we

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1 did some other stuff with the function, functionality, but
2 everything is identical; so...

3 Q. Is the trigger guard in the lower receiver on
4 the KE-15?

5 A. In our competition version, yes.

6 Q. And is that a winter trigger guard on the
7 competition version?

8 A. They call it that. I mean, the winter trigger
9 guard was actually a dipped guard that went onto -- it was
10 a removable component. We integrated it in. And a lot of
11 people have done stylistic things but ours is the only way
12 we like it; so...

13 Q. So your trigger guard is not removable on the
14 KE-15?

15 A. On the competition version, correct. I just
16 want to be clear, because we have different models of
17 lowers, we've got.

18 Q. Yeah. No, I appreciate that. When did you
19 come out with a competition version of the KE-15?

20 A. '15, '16.

21 Q. Did Russell Phagan work on that project with
22 you?

23 A. Yes.

24 Q. Did he have input on what kind of trigger guard
25 you put on it?

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1 A. You asked that question earlier, and I said I
2 was pretty sure we sold out of everything, but I'd have to
3 check the records. I know we don't have any in our
4 inventory.

5 Q. Sure. Did you still have some in 2018, though?

6 A. I don't believe so. But I would have to check
7 the records.

8 Q. But you believe that the records should reflect
9 a high demand for the polymer lower receiver before the
10 2016 election?

11 A. It was a high demand for anything firearms
12 related.

13 Q. Who all was involved in the development of the
14 KP-15? You talked about your team, obviously, of what
15 I'll call the Tool Design Group team. And then, of
16 course, Russell, and you at KE Arms. But who was involved
17 with the development of the KP-15 in its early stages?

18 A. Russell and I.

19 Q. And then what role did Russell play in that?

20 A. As a competitive shooter, giving feedback on,
21 you know, what people that shoot firearms want to see in a
22 rifle.

23 Q. So Russell, as a competitive shooter, was
24 telling you here's what -- are you a shooter?

25 A. I'm not a competitive shooter, no.

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1 Q. Okay. So Russell is telling you here's what us
2 competitive shooters want?

3 A. Yes.

4 Q. And what was that that they want?

5 A. Well, we had already geared our billet lower to
6 that. So they want something that the mag can easily be,
7 you know, put in and out. They wanted, you know,
8 obviously, lightweight was a plus.

9 And they don't just, you know, -- I, you know, I'm
10 trying to think of all the different things but off the
11 top of my head those are the first two.

12 Q. Okay. Did he tell you what the problems were
13 with the existing polymer lowers on the market?

14 A. All polymer lowers on the market?

15 Q. Yeah.

16 A. I'm sure we discussed it.

17 Q. Yeah. Did he tell you what he saw as the
18 problems with the existing polymer lowers on the market,
19 and not just the CAV-15 but any others as well?

20 A. Oh, yeah, I'm sure we discussed all that.

21 Q. Did he tell you what he thought were the
22 problems with the CAV-15?

23 A. Yeah. I'm sure he did. Like I said, you're
24 talking about seven-year-old conversations; so...

25 Q. Yeah. But they happened frequently, right?

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1 That's what it sounds like.

2 A. Yeah.

3 Q. So you and Russell were involved initially.
4 And did anybody else become involved in KE Arms after
5 that?

6 MR. CALAWAY: Object to the form.

7 A. Not on the design side, no. I handle that.

8 Q. (By Mr. Bogan) So you and -- it was exclusively
9 you and Russell on the design side, right?

10 A. Yes.

11 Q. And then what about the actual production side?
12 Once you had the design, KE Arms, did you produce, did you
13 -- did KE Arms make the mold?

14 A. No.

15 Q. Is KE Arms capable of making the mold?

16 A. Getting closer but not at that time, no.

17 Q. What goes in to making one of these molds?

18 A. Obviously, a ton of engineering design work. I
19 mean, figuring out everything from gating to pooling, you
20 know, for the initial start-up of figuring out what size
21 tool die and block it needs to go into, and the tonnages
22 of the press. Gating, flows, I mean, there's, you know, a
23 million different things that go into it.

24 Q. Had you ever operated an injection mold for --
25 mold? Let me start that --

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1 A. Have I ever pushed the button?

2 Q. What do you call that? Is it just an injection
3 mold machine? I mean, what do you call that?

4 A. Yeah, injection mold machine.

5 Q. Have you ever operated an injection mold
6 machine?

7 A. Not personally.

8 Q. Have you ever set one up?

9 A. Not personally.

10 Q. Have you ever taken molds in and out of the
11 machine?

12 A. Not personally.

13 Q. Had Mr. Phagan ever operated an injection mold
14 machine?

15 A. I've seen videos of him doing it, so I'm
16 assuming.

17 Q. So yes?

18 A. Yeah.

19 Q. Had Mr. Phagan ever taken molds in and out of
20 the injection mold machine, to your knowledge?

21 A. I'm assuming he has, but I can't speak for him.

22 Q. So out of the two of you on the production
23 side, Mr. Phagan really is the only one who has ever done
24 it, right?

25 A. Oh, actually, run a mold, a press, yes. But

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1 I've been around molds and presses, and I understand the
2 concept, so, you know...

3 Q. I've been around guns but that doesn't make me
4 a good shooter. I'm just kidding. So what else on the
5 production side? It was you and Russell obviously on the
6 production side as well in the beginning, right?

7 A. Correct.

8 Q. Anybody else?

9 A. Well, we would have been talking with MDI and
10 Moldworx.

11 Q. Do you know who owns MDI?

12 A. A bank.

13 Q. Is that after some financial issues; or...

14 A. It's my understanding but I'm not at liberty to
15 disclose their current situation.

16 Q. How do you know it?

17 A. Actually KE Arms does.

18 Q. Did you sign a non-disclosure with MDI?

19 A. I don't know.

20 MR. CALAWAY: I don't think you're
21 prepared.

22 A. I'm not prepared to answer questions on MDI,
23 so...

24 Q. (By Mr. Bogan) Do you own any MDI?

25 A. No, I do not.

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1 Q. Does your wife?

2 A. No, she does not.

3 Q. Do you know the previous owners of MDI prior to
4 the banks taking over?

5 A. No, I do not.

6 Q. So your relationship with MDI is strictly as a
7 customer, right?

8 A. Correct.

9 Q. What about Moldworx? Do you know who owns
10 Moldworx?

11 A. Recently sold, and I honestly don't know who --
12 I'm sure I heard it but another company bought it.

13 Q. Do you know who owned it before?

14 A. Jim, and I don't know the structure of the
15 company. I have no idea of the investors, or who owned it
16 or whatever. He just told me he was the owner when I met
17 him.

18 Q. Okay. And KE Arms does not have any ownership
19 in that company?

20 A. We do not.

21 Q. You're strictly a customer?

22 A. Strictly a customer.

23 Q. So you and Russell then brought MDI and
24 Moldworx into the product design or, sorry, production
25 side of the KP-15?

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1 A. Well, mold and product design and then
2 production.

3 Q. Was anybody else involved at that stage? I
4 understand later, you know, more people were involved but
5 was anyone involved at that stage?

6 A. At the stage we brought them in?

7 Q. Yeah, when you met with MDI and Moldworx.

8 A. Well, we met them to help finalize the design
9 so they could be moldable. I don't know if you say at
10 that stage, in this development stage, we brought in
11 somebody to do mold flow analysis. And then they pretty
12 much ran with the rest of it.

13 Q. Who did the mold flow analysis?

14 A. I'm hell on names but it's either Ray or Randy.

15 Q. Would that be Randy Sperry?

16 A. Yeah.

17 Q. He actually worked for Moldworx, right?

18 A. No.

19 Q. He's got his own company now, I believe, but...

20 A. No, this -- the mold flow analysis was separate
21 of MDI -- or separate of MDI and separate of Moldworx.

22 Q. Would you say that Brownells was involved in
23 the development and design of the KP-15?

24 A. No.

25 Q. So Brownells' involvement was strictly as part

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1 of the WWSD Project and as a distributor, correct?

2 A. Distributor, as a distributor.

3 Q. Well, Brownells was part of the WWSD Project,
4 right?

5 A. Correct. But I'm saying that they were a
6 distributor for us. There's no --

7 Q. How much have you paid Brownells for
8 advertising of the KP-15?

9 A. Nothing.

10 Q. How much have you paid Brownells for
11 advertising of the WWSD Project?

12 A. Nothing.

13 Q. Would you agree with the statement that
14 Brownells is a partner in the WWSD Project?

15 A. It depends on how you define "partner," but
16 their -- their interaction is more with InRange than us as
17 far as the WWSD Project would be concerned.

18 Q. Did you know that Brownells is really what made
19 the WWSD Project commercially viable?

20 MR. CALAWAY: Object to the form.

21 A. Is that your belief?

22 Q. (By Mr. Bogan) That is my belief. Is that
23 your belief?

24 A. There's a number of different distributors, and
25 that's an Ian and Karl project, so it would be best to

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1 speak to them about it.

2 Q. I will. I was just wondering what you thought
3 about that because I believe you've seen where Brownells
4 actually reached out to Ian and Karl and wanted to join
5 this team and this effort. You saw that, right?

6 A. I don't know who reached out to who initially.

7 Q. Okay. Let's go to Exhibit 88. If you go to
8 the back of that exhibit, there's an email from April 9th,
9 2018, from Paul Levy to Ian. Do you see that?

10 A. Yes, I do.

11 Q. Paul says, "Would InRange TV be comfortable
12 with Brownells pursuing this project."

13 A. Oh, sorry. Last page?

14 Q. Yes, yes, I'm sorry.

15 A. I was in the middle of it. I was going to --

16 Q. Yeah. KEA 00493. Sorry. I should have waited
17 for you to get there.

18 A. No, I apologize. I have the last page, where
19 it's "quite informative," or...

20 Q. Yeah, the second paragraph said, "Would InRange
21 TV be comfortable with Brownells pursuing this project."
22 Do you see that?

23 A. Oh, I see that.

24 Q. And he says he doesn't want "to straight up
25 lift the concept." Do you see that, the very last

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1 sentence?

2 A. Okay.

3 Q. Does that give you any indication of who
4 pursued who in relation to the WWSD Project between
5 Brownells and InRange?

6 A. Not knowing the context of their conversations
7 between InRange and Brownells, I don't know how they
8 initially started it, but...

9 Q. Who did the rough design work? And by "rough
10 design work," I mean, not engineered drawings. I'm sure
11 this was probably drawn on a napkin or something at some
12 point in time as most great inventions are. Who did the
13 rough design work for the KP-15?

14 A. I mean, literally the rough design work was
15 taking one of our billet lowers and putting a fixed
16 buttstock on it. I mean, it was that simple. We had the
17 preexisting design so we didn't have to do a bar napkin
18 sketch.

19 Q. What was the preexisting design you referenced?

20 A. Our billet lowers.

21 Q. Oh. On your billet lower receiver, when the
22 hammer pin is inside of the weapon, is it recessed or is
23 it flush?

24 A. It's flush.

25 Q. Is the hammer pin on --

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1 A. Both. Depending on whether you have captured
2 hammer pins and springs, or some that are exterior with
3 screws and a number of different pins.

4 Q. And I believe you testified -- maybe it was
5 Russell testified -- that the section of the lower where
6 the hammer pin goes in is thicker than on an aluminum
7 receiver because -- to give it more strength. Did Russell
8 say that? Or you didn't say it?

9 A. He hasn't said it to them, no.

10 MR. CALAWAY: Object to the form. I don't
11 think you were here for Russell's.

12 Q. (By Mr. Bogan) Yeah.

13 A. Yeah, sorry. I'm catching up.

14 Q. That -- that was my bad. Would you agree with
15 that statement that the area where the hammer pin is
16 located is thicker on the KP-15 than it is on the KE-15?

17 A. Yes, it is. Yeah.

18 Q. So that would have required some sort of design
19 modification beyond just changing an aluminum to polymer,
20 right?

21 A. Correct.

22 Q. Are you aware that the CAV-15 also has a larger
23 area where the hammer pin is for the same reason?

24 MR. CALAWAY: Object to the form.

25 A. Yes. So does the Colt.

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1 Q. (By Mr. Bogan) But you -- I didn't ask about
2 the Colt. I'm talking about the CAV-15. You're aware
3 that it's thicker at that location, correct?

4 A. Yeah.

5 Q. And when you did this design of the KP-15, you
6 didn't own the Colt yet, right?

7 A. I had seen the Colt. I had seen the CAV and I
8 had seen everything related to it.

9 Q. You had seen the Colt in person?

10 A. In photos.

11 Q. And when did you see the Colt in photos? And I
12 say that because I thought you said the photos you saw of
13 the Colt were when you were talking about buying it.

14 A. Oh, I would have to look at the exact timing,
15 but...

16 Q. Did you have discussions with Russell about
17 making that part of the lower thicker for -- to make it
18 stronger?

19 A. We had had a number of discussions with
20 actually the team of development of what we were going to
21 do as far as all kinds of structures all over the rifle
22 itself.

23 Q. The team on development; is that the team we
24 talked about earlier?

25 A. Yeah, Moldworx and MDI. Once we made a

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1 decision, we were -- we moved forward on developing a new
2 product, so...

3 Q. But I guess my point is, and I don't know
4 plastics like you do, so just correct me if I'm wrong.

5 A. Right.

6 Q. But it's not necessarily intuitive to know that
7 that section has to be thicker, is it?

8 A. I don't know if I would call it intuitive. But
9 I mean, I guess I know what you're driving at.

10 Q. Well, what I'm getting at is how did you come
11 to the decision or the conclusion to make that particular
12 section thicker?

13 A. We made a -- we made a number of areas thicker.
14 We made a number of ribs. We added a bunch of different
15 things because polymer works and acts differently than
16 aluminum.

17 Q. Right. So I guess my question is: How did the
18 decision get made that this area needs to be thicker to be
19 reinforced than your aluminum lower?

20 A. I don't remember the specific directions.

21 Q. But you didn't have that experience before
22 development of the KP-15, right?

23 MR. CALAWAY: Object to the form.

24 A. I guess I don't -- I mean, like I said, if
25 you're saying the -- did the --

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1 MR. CALAWAY: I don't think there -- but
2 answer if you can. I'm not --

3 A. I guess I can't answer the question.

4 Q. (By Mr. Bogan) Well, so it's not -- I think we
5 both agree it's not intuitive to know that you have to
6 make it thicker because it's made out of plastic
7 necessarily, right?

8 A. I mean, it would be intuitive that you would
9 have to reinforce certain areas around the polymer lower.

10 Q. Right. So how did you select that area is my
11 question.

12 A. I honestly don't remember exactly how we
13 decided to do that. I mean, I do know there was a lot of
14 people prior to any of this having problems with the
15 firearms in that area; so...

16 Q. Who would that be?

17 A. End users, they had problems with it on the
18 Mark I. You know, it's ironic enough, Colt, you know, saw
19 the same problem with the same answer. So, and there's --
20 I guess to say is it intuitive, other people have come up
21 with the same solution.

22 Q. Well, you know, Colt came up with the same
23 solution. How do you know that Colt came up with that
24 solution?

25 A. Because they put it in the firearm.

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1 Q. How do you know that Colt didn't just make that
2 area thicker because they made it thicker? How do you
3 know that was for support?

4 MR. CALAWAY: Object to the form.

5 A. I don't know what anybody did. Are you
6 asking--

7 Q. (By Mr. Bogan) I don't know, sir. You said
8 Colt did it, right?

9 A. Yeah.

10 Q. And they did it to make it stronger.

11 A. Right.

12 Q. That was your testimony, not mine. I'm asking
13 you --

14 A. I would assume through testing.

15 Q. Okay. So you don't know why Colt made that
16 area thicker?

17 A. I would assume through -- you asked me why they
18 would do it. I would say I assume through testing.

19 Q. Okay.

20 A. And to control the stresses of the hammer.

21 Q. And but you don't remember if Russell ever had
22 any discussions with you about that or the need for that?

23 A. Like I said, not specifically. But I don't
24 think it's a big point. I do know that -- well, --

25 Q. Yeah, and that's fine. You don't have to think

1 any of this is a big point or not a big point. I'm just
2 trying to gather what information you had. And also in
3 addition to that, what information Mr. Phagan provided to
4 you. And so that would be, to me, an area that he would
5 be helpful. I mean, the guy has been in this business for
6 a long time.

7 A. Right.

8 Q. He helped create the CAV-15. No offense to Mr.
9 Nealon. He developed it, obviously, first and Mr. Phagan
10 helped him, and made other iterations of it.

11 A. Yeah.

12 Q. So I would think that Mr. Phagan would be a
13 great source of information on that.

14 A. Like I said, driving in this particular point
15 on it, there's a number of areas that we strengthened and
16 reinforced the parts of who drove a particular design
17 element at a particular time. Off the top of my head, I
18 don't remember.

19 Q. Yeah. Did Mr. Phagan talk to you at all about
20 the length of the hammer pin being longer than the
21 standard hammer pin so that it would sit flush because
22 people didn't like the recessed hammer pin?

23 MR. CALAWAY: Object to the form.

24 Q. (By Mr. Bogan) Did you have that discussion
25 with him?

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1 A. Yeah. We actually manufactured longer hammer
2 pins prior to even doing this. I think we're the only
3 people that ever did.

4 Q. Why did you manufacture longer hammer pins?

5 A. It was a customer demand for it.

6 Q. Who was the customer?

7 A. CAV Arm's owners.

8 Q. So you made a longer hammer pin for CAV Arms
9 owners?

10 A. Correct.

11 Q. And that was so it would sit flush, right?

12 A. Correct.

13 Q. And who told you that that was a need?

14 A. Russell.

15 Q. When did Russell tell you that?

16 A. Prior to us making them. I don't know exactly
17 when we did it. We -- we make a lot of products.

18 Q. After he worked for you?

19 A. Yes.

20 Q. So Russell told you after he went to work for
21 you, Hey, CAV-15 owners are unsure about this. So let's
22 make longer hammer pins that we can sell for the CAV-15 so
23 they can still get their hammer pins flush and no problem.
24 Right?

25 A. Correct. I think we captured hammer opinions

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1 for them, too.

2 Q. Did Russell ever tell you that Pivot Pin made
3 the pins for the CAV-15?

4 A. I'm sure at some point. But I've been aware of
5 Pivot Pin for years.

6 Q. Right. Did you know that Pivot Pin made the
7 pins for the CAV-15 before Russell told you that?

8 A. I don't know that I knew that. But I knew they
9 made a lot of pins for the firearms industry.

10 Q. Did Russell tell you that GWACS Armory
11 outsourced their buttstock, or their buttplates?

12 A. I don't know that he told us that. But I
13 believe they asked us to make them for them once.

14 Q. And when they asked that, was that after you
15 signed the NDA with Armory?

16 A. I honestly don't know.

17 Q. Well, did they tell you anything, or ask you to
18 do anything for them before you signed the NDA in 2015,
19 and "they" being Armory?

20 A. I don't know.

21 Q. So now getting further down the stages, who did
22 the actual production design work?

23 A. I guess Mold -- Moldworx. And towards the end,
24 I think, it was Randy. I get the two names mixed up. But
25 their inside engineer, we hired him personally to finish

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1 up some of this stuff, because Jim just wanted to get it
2 wrapped up.

3 Q. Okay. So Moldworx did the actual production
4 design. I think we talked about that earlier.

5 A. Right.

6 Q. And then Randy, what -- what was it that Randy
7 did there at the end you're talking about?

8 A. He was finalizing drafts, and, you know,
9 release angles, and, you know, all the stuff that I know
10 about but don't know about.

11 Q. Did Russell have any conversations with you
12 about release angles? I just recently learned of that
13 term; so...

14 A. I mean, obviously, we all know that you have to
15 have a release angle for a mold. So whether it's a
16 plastic injection mold, rotor mold, whatever, but each one
17 is specific to itself. So we left that up to the expert.

18 Q. How much did you pay Randy for that design
19 work?

20 A. Part of it was originally in the mold
21 development program with MDI. I think that's why we broke
22 it out because we were feeling like they were going over.
23 So we paid them, I believe \$3,000.

24 Q. Okay. Russell said 3,500, so that sounds
25 roughly --

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1 A. Yeah.

2 Q. -- roughly right.

3 A. Jim was kind of feeling like I've done what I
4 said I would do so we just agreed to pay Randy.

5 Q. And you said MDI was going over budget?

6 A. Moldworx.

7 Q. Huh?

8 A. Moldworx.

9 Q. Oh, I'm sorry. I thought you said MDI.

10 A. If I misspoke, I apologize.

11 Q. One of us did. All good. We got it fixed.
12 okay. So you thought Moldworx was going over?

13 A. I would say that was what Jim was feeling, you
14 know, that it was better for us just to finalize this
15 stuff Randy and have them knock it out, get it done.

16 Q. And Jim was the owner of Moldworx?

17 A. Correct. One of the times.

18 Q. Yeah. What do you mean that Jim thought you
19 were going over? I mean, did -- I thought, when you said
20 it I thought, I just assumed from a budget perspective,
21 you had gone over budget. But I take it since Jim was
22 saying, "finish up with Randy," what do you mean by he was
23 going over?

24 A. The time that he felt it was allowed to put the
25 program together budget wise.

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1 Q. So --

2 A. And we were kind of at the point where it's
3 like we're spending a lot of money on this. How do we
4 just get this wrapped up.

5 Q. Got you.

6 A. And he's like, you know what, pay Randy
7 directly to get the thing finished up --

8 Q. Got you.

9 A. -- and we'll -- we'll start cutting -- cutting
10 a mold.

11 Q. Got you. So Moldworx was taking too long,
12 essentially?

13 A. Yeah.

14 Q. And Jim said, "Have Randy just finish it up."

15 A. Well, and as you remember, this would have been
16 pretty close to the start, so, you know, we were like,
17 Let's get this thing going.

18 Q. I'm sorry, pretty close to the start of -- you
19 said --

20 A. Us wanting to get into production.

21 Q. Oh, okay.

22 A. So it was, like, you know, --

23 Q. Yeah.

24 A. -- this dragging on and it was one of those
25 things Randy has got a lot to do at work so if he could go

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1 knock this out on the weekend, then, or whatever the time
2 frame was -- I don't want to specifically say the weekend
3 or being two days or --

4 Q. Sure. Sure.

5 A. -- whatever. But if he was one that put some
6 of his personal time in it, it would speed up the process.

7 Q. And Jim was okay with that?

8 A. He was the one that suggested it, if I remember
9 correctly.

10 Q. I think if Randy was busy at work, he'd want
11 him busy at work, but I guess not.

12 A. Everybody has got his life after work.

13 Q. And some of that is working after work. Right?
14 I bet you you probably don't -- that's probably all you do
15 is work, right?

16 A. 24/7.

17 Q. I can imagine, seven companies and all you've
18 got going on, I bet you work a lot.

19 Mr. Phagan had testified yesterday -- and I'm
20 paraphrasing, I'm not -- and I'm -- I may -- I'm not going
21 to take any liberties, but I'm going to try to explain it
22 the best I can. I'm sure counsel will object if I go
23 astray.

24 But I believe Mr. Phagan testified that a mold
25 design was given to Moldworx. And I think he meant like,

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1 you know, kind of a rough design or maybe an early concept
2 or something like that. Do you know what he would have
3 been talking about there?

4 A. No. If he said that, he would have been
5 incorrect.

6 Q. Okay. What was Russell Phagan's role in the
7 KP-15 project?

8 A. To help with the development of it as we've
9 been speaking about all day.

10 Q. Did he have any specific role as far as, you
11 know, I believe we talked earlier about sales and
12 marketing is not necessarily your strong suit.

13 A. Right.

14 Q. And I believe it is Mr. Phagan's, is that
15 right?

16 A. Correct.

17 Q. So one of Mr. Phagan's roles was going to be
18 sales and marketing, right?

19 A. Correct.

20 Q. Mr. Phagan brought InRange to you, correct?

21 A. I'm sorry?

22 Q. Mr. Phagan brought InRange to you, correct?

23 A. Yeah. Not just on this, but he introduced me
24 to InRange pretty much after we met.

25 Q. I believe I've seen somewhere where it really

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1 appeared that Mr. Phagan was really the biggest driver
2 behind this project.

3 A. Oh --

4 Q. would you agree with that statement?

5 MR. CALAWAY: Object to the form.

6 A. -- I think we're all, you know, had reason to
7 push the project. I don't know, I mean, obviously, he
8 grew up with the thing; so...

9 Q. (By Mr. Bogan) Right. would you say that Mr.
10 Phagan spent more time on the KP-15 project than you did,
11 just time? Obviously, you put up the money.

12 A. I think we both spent a lot of time with it but
13 obviously I'm spread thin between a lot of different
14 organizations. So, you know, in the automotive industry,
15 it would have been the one who was running the project
16 kind of thing.

17 Q. Project lead?

18 A. Yeah.

19 Q. I guess I could have asked that a lot easier
20 and just said, Is he the project lead instead of the guy
21 driving it. But I didn't get there. I apologize.

22 A. Fair enough.

23 Q. It took me a little longer. I think I asked
24 you this, and I apologize if I did, but did you have an
25 NDA with Moldworx?

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1 A. No.

2 Q. What about with Mr. Sperry?

3 A. No.

4 Q. Can Mr. Sperry use your prints or CAD files?

5 A. I guess he could. He's not under an NDA.

6 Q. What about Mr. -- what about Moldworx?

7 A. I -- like I said, we're not holding any of them
8 under an NDA; so...

9 Q. Okay. And I thought you testified earlier,
10 it's all pretty public knowledge, nothing is really unique
11 or special it. Probably "special" is not the right word.

12 A. We never tried to protect it.

13 Q. Yeah. Because you don't think it's
14 protectable, right, I think is what you said?

15 A. Uh-huh.

16 Q. Have you produced your CAD files and prints for
17 the KP-15 in this lawsuit?

18 A. No, we have not.

19 Q. Why not?

20 A. I don't know that we were asked for them.

21 MR. CALAWAY: for the record, I don't think
22 we have. If that's a -- that's a question you're trying
23 to catch him on, we have not provided those.

24 MR. BOGAN: I'm not trying to catch him. I
25 just asked if he had produced them.

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1 MR. CALAWAY: Yeah.

2 A. I didn't know that we had been asked for them.

3 Q. (By Mr. Bogan) Could you get us a copy of
4 those, please?

5 A. Yeah.

6 Q. And I know that you said the prints were large.
7 And I know counsel and I talked about that, so we can just
8 add that tot he --

9 MR. CALAWAY: And can he -- which prints,
10 which CAD files are you asking for? Are they the ones
11 that you asked for last week?

12 MR. BOGAN: Well, that's what I was just
13 referring to there was last week we had already discussed
14 the other prints and CAD files --

15 MR. CALAWAY: Yeah, we're blowing those up
16 as we speak so we can give them to you again.

17 MR. BOGAN: Again?

18 MR. CALAWAY: They are the same ones that
19 they had sent to them in 2016 that you should already
20 have.

21 MR. BOGAN: Yeah. We just need everything
22 that was on that, whatever he sold them in 2016.

23 MR. CALAWAY: Yeah.

24 A. That's why it's confusing, because we sent that
25 to them before.

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1 Q. (By Mr. Bogan) Yeah, we just -- in litigation,
2 we have to ask for them or receive them because we don't
3 know. So I mean, I understand that you're representing to
4 me that the only thing that was on that file was what was
5 sent in 2016.

6 A. Right.

7 Q. But we have to verify that for ourselves. And
8 I don't believe we received the prints that you talked
9 about which you said were actually maybe not usable but
10 more usable than the files that you couldn't open.

11 So -- so I don't believe the prints were sent to us.
12 We didn't receive -- I don't believe we received hundreds
13 of pages of prints.

14 MR. CALAWAY: So for the record, we're
15 going to provide -- there's a box of stuff --

16 MR. BOGAN: Uh-huh.

17 MR. CALAWAY: -- that was requested in your
18 -- I think it was Thursday or Wednesday that you asked for
19 them. We are going to provide the entire box.

20 But I think I explained this to you in our meet and
21 confer, a lot of those prints -- there's, like, hundreds
22 of prints -- we're going to provide those to you in
23 digital form so we can get them to you --

24 MR. BOGAN: Okay.

25 MR. CALAWAY: -- rather than produce a box

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1 of old papers that were stored in Nealon's garage.

2 MR. BOGAN: Yeah.

3 A. They will have to be scanned in, and we don't
4 have a scanner big enough.

5 MR. BOGAN: Yeah, no, that's fine. And
6 that's what I was trying to -- I was trying to be clear.

7 MR. CALAWAY: Is that what you're asking
8 for?

9 MR. BOGAN: Well, I'm requesting the prints
10 and CAD files for the KP-15 separate.

11 MR. CALAWAY: Oh.

12 A. He wants our new design.

13 MR. BOGAN: That's what I was trying --
14 yeah, the new design. Because I mean, he just said it's
15 not special, and it's out there. It's not protected or
16 protectable; so...

17 MR. CALAWAY: I mean, we can go off the
18 record for this if we want to continue to talk about
19 discovery and stuff.

20 MR. BOGAN: Oh, I -- no, I think we're
21 good. I was just trying to -- I was just asking you to
22 provide it.

23 MR. CALAWAY: Okay. Send your request.

24 MR. BOGAN: Do you want me to send a
25 specific request?

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1 MR. CALAWAY: Yeah, absolutely, if that's
2 what you're asking for.

3 MR. BOGAN: Okay.

4 MR. CALAWAY: Last week what you asked for
5 was, like I said, this separate box of stuff --

6 MR. BOGAN: I understand.

7 MR. CALAWAY: -- which I told you at a meet
8 and confer, we would provide. If you're asking for a
9 separate box of CAD files and prints, let's, by all means,
10 talk about it.

11 MR. BOGAN: Yeah, no, yeah, certainly. I
12 mean, we can talk about it if you have any issues with it
13 for sure.

14 Q. (By Mr. Bogan) which -- do you know what brand
15 of vibration welder you purchased?

16 A. Branson.

17 Q. Branson? How did you select Branson?

18 A. I believe the number one manufacturer of
19 vibratory welders. And they're U.S. based.

20 Q. Do you know what kind of vibration welder GWACS
21 owns?

22 A. For the bill of sale I just recently saw, I
23 don't -- it wasn't specified.

24 Q. So you don't know.

25 A. I -- I think the discussions, like I said, was

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1 it might have been a Branson.

2 Q. How does one go about figuring out that the
3 Branson is the number one vibration welder? Is that just
4 an industry knowledge thing?

5 A. Well, actually, we talked with -- I'm pretty
6 sure, and I'm sorry if I'm looking their way. But I'm
7 pretty sure we were led that direction also by MDI. But I
8 would have to --

9 Q. Did Mr. Phagan have any input in which welder
10 you selected?

11 A. At that point we were more talking with
12 Moldworx and MDI for their advice.

13 Q. Did you have any discussions with Russell
14 Phagan prior to July 15th of 2020 when this lawsuit was
15 filed and when Armory filed its claims? Did you have any
16 discussions with Mr. Phagan about whether or not the
17 CAV-15 was protectable -- from an intellectual property
18 standpoint -- I'm talking about the design?

19 A. Prior to you guys filing a lawsuit?

20 Q. Yes.

21 A. Yes.

22 Q. What did Mr. Phagan tell you about whether or
23 not the design of the CAV-15 was protectable?

24 A. I think it's both our feeling that it's not.

25 Q. So he told you prior to development of the

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1 KP-15, and after he went to work for you, he did not
2 believe the CAV-15 was protectable, correct?

3 A. Correct.

4 Q. Did you have any discussion regarding that same
5 topic with Brownells?

6 A. No.

7 Q. Did you have any discussions with Mr. Nealon
8 about the same topic?

9 A. Not really. Nealon and I haven't talked that
10 much.

11 Q. You say "not really"?

12 A. I mean, since then I've talked with him and his
13 believe is it's not.

14 Q. Sure.

15 A. But you know, I think that anybody that saw how
16 that was handled and how it was put in public domain
17 couldn't try to assert that there was.

18 Q. Who put it in the public domain, to your
19 knowledge?

20 A. Nealon, CAV Arms, GWACS, and specifically Shel,
21 and --

22 Q. Are you missing anybody?

23 A. I -- I mean, off the top of my head, I mean, --

24 Q. How about your friend Mr. Phagan over there?

25 A. Oh, yeah, sure. Yeah.

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1 Q. Did he put it in the public domain?

2 A. Oh, yeah, sure, yeah. When I say that, he
3 would have been working with CAV and, you know, so -- you
4 know, and wrote it.

5 And for that matter, InRange and a million other
6 people that have written about it or posted pictures or
7 3D, printed them or -- I mean, I don't have every example
8 off the top of my head. But there's a pretty extensive
9 group of people that have been posting this on the
10 internet for the last decade.

11 Q. What did Brownells say to you when they found
12 out or when they received, I guess I should say, about the
13 cease and desist demand?

14 A. We told them that we had already worked with
15 legal counsel on it, and that we would get back with them
16 when we found out how it was going to proceed. They did
17 seem concerned, though.

18 Q. They did not?

19 A. They did.

20 Q. They did. Did anybody express specific
21 concerns to you?

22 A. No. I just think at the onset without us
23 knowing exactly what our legal position was and that was
24 one of the reasons we kind of backed off all the marketing
25 and advertising on it. And as we moved forward in

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1 discussions with our legal counsel, we felt that there was
2 no issue.

3 Q. And you already had legal counsel when
4 Brownells received that demand, correct?

5 A. Correct.

6 Q. If you will turn to Exhibit 62 for me, please.
7 This is an email from Russell Phagan at KEArms.com to Paul
8 Levy at Brownells as well as Ian McCollum and Karl
9 Kasarda. Do you see that?

10 A. Am I starting on the front page?

11 Q. Yeah, the very top.

12 A. Correct.

13 Q. And it's dated September 11, 2018, correct?

14 A. Correct.

15 Q. Now, isn't that the same date that we saw
16 earlier where Mr. Levy was asking Mr. Phagan if it was
17 okay to tell Armory that KE Arms was their partner?

18 A. I'll take your word for it. I mean, --

19 Q. You don't have to. You can. But you don't
20 have to. Let's look. Let's make sure. Let's go to
21 Exhibit 60, just a couple --

22 A. It looks like it's the same thing.

23 Q. I guess I should have made it a lot easier and
24 told you to look at the next page because it's the same
25 email.

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1 A. All right.

2 Q. So this is the same email chain but here's
3 another email that we hadn't seen yet.

4 A. Right.

5 Q. And this is from Russell to Paul. And he's
6 copied Ian and Paul on it. And it says that he agrees,
7 "he" being Russell, "he" being KE Arms "agree that seeing
8 the quote from GWACS makes the most sense. Hopefully it
9 is reasonable and they can deliver in a reasonable time
10 period. If not we can talk about other options."

11 Do you know what other options he was referring to?

12 A. US moving forward with manufacturing our own
13 tower.

14 Q. The KP-15?

15 A. Yeah.

16 Q. Okay. And the research he was going to do in
17 that direction, should it be needed, was to research what
18 it was going to take for you guys to develop it, right?

19 MR. CALAWAY: Object to the form.

20 A. I -- I would gather by this time we probably
21 knew the "bigger than a breadbox, smaller than a house"
22 what it would take to do it.

23 Q. (By Mr. Bogan) Do you know what research he
24 was going to do?

25 A. I would imagine finding out if KE Arms was

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1 willing to invest in moving forward.

2 Q. And then if you look at the second paragraph,
3 it says, "KE Arms is here to help with any part of the
4 project we can." Do you see that?

5 A. Yeah.

6 Q. It says, "This could include:" and he says,
7 "Manufacturing the aluminum buttplates GWACS currently
8 outsources." Do you see that?

9 A. Yeah.

10 Q. Was it public knowledge that GWACS outsourced
11 it's buttplates?

12 A. I don't know.

13 Q. Did you see that in any of the posts in all
14 these public documents you talked about, did you see that
15 in any of those?

16 A. I can't say that I have.

17 Q. The next thing says, "Manufacturing dedicated
18 hammer pins that are the full width of the CAV-15 MKII
19 receiver (this area is wider than mil-spec and while
20 mil-spec works, the pin being recessed is a constant
21 source of concern with retail customers in my customer
22 service experience)." Do you see that?

23 A. Yeah.

24 Q. And then in the next paragraph he says, "There
25 are also better takedown and are pivot pin options

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1 available now that would be well suited for this project."

2 Do you see that?

3 A. Yeah.

4 Q. And he provides you with pivot -- provides,
5 sorry, KE Arms provides Paul levy with Pivotpins.com, --

6 A. Correct.

7 Q. -- and the pins that he's suggesting, right?

8 A. Yes.

9 Q. Are you aware that those are the pins that
10 GWACS Armory used in the CAV-15?

11 A. Yeah, they're commercially available to anybody
12 that wants to buy them.

13 Q. Right. Now, was it public knowledge that GWACS
14 Armory bought pivot pins from Pivotpins.com versus
15 manufacturing themselves?

16 A. I would have known it from looking at it.

17 Q. You would have known it.

18 A. Yeah.

19 Q. You would have known that they got it from
20 Pivot Pin?

21 A. They're the source but maybe I have more
22 information than the average guy. But yeah, that's --
23 it's the same thing that's in the HK MP5s. It's a pretty
24 common pin in the firearms industry.

25 Q. And are they longer than the normal pins?

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1 A. You can order them just about any length you
2 want or diameter.

3 Q. Okay. What about the ones that were sold with
4 it?

5 A. I -- I'm not a pivot pin expert on that. But I
6 mean, I know that there were pivot pins that were longer
7 available from a couple of other manufacturers.

8 Q. Did you make any pivot pins for the CAV-15?

9 A. We did not make the pivot pins, no.

10 Q. Do you make the pivot pins now?

11 A. We do not.

12 Q. Who makes the pivot pins now?

13 A. Pivot Point, I believe.

14 Q. Pivotpins.com, which that's their website,
15 right? Pivot -- I think it's called pivotpoint when you
16 look at --

17 A. If you say that. I've never been there; so...

18 Q. I think when you go to their website, it
19 actually says Pivot Point, but their web address is
20 Pivotpins.com. Right?

21 A. Sure.

22 Q. And they're the same length, diameter,
23 everything as the CAV-15 pins?

24 A. Yeah, I believe it goes all the way back to CAV
25 Arms.

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1 Q. Yeah, but it's the same pins today, right?

2 A. As ours? I would have to check. I think ours
3 is a specific dimension too. But I've never set one
4 beside the other.

5 Q. Do you know where you got that dimension?

6 A. After we finished the design, we measured the
7 distance across and ordered the pin.

8 Q. And so in that ground up, start from scratch
9 development, the pins for the CAV 15 and the pins for the
10 KE Arms, they shouldn't be the same length, right?

11 A. I don't know if they are or not.

12 Q. Because the lowers are actually wider than
13 mil-spec, right?

14 A. Correct.

15 Q. So you would, I assume, be surprised if we put
16 them right next to each other and they were the same size?

17 A. I honestly can't tell you if they are or not.

18 Q. Now, who decided which -- who decided to go
19 with pivot pins for the KP-15, Mr. Phagan?

20 A. We looked at a couple of different options.
21 There's pins that have little drop downs. We looked at
22 some captures, the Colt in the front has a very
23 rudimentary cross bolt and nut. So we looked at a couple
24 of different things, but we settled on that.

25 Q. Did Mr. Phagan tell you that Armory got their

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1 pins from pivot point or pivotpins.com?

2 MR. CALAWAY: Object to the form.

3 A. I would have already known that. I worked on a
4 couple of MP-5 projects. We were actually trying to put
5 an AR lower on an MP5, and we looked at a bunch of
6 different points for that. It's not a secret that pivot
7 point, pivot.com makes pins. And like I said, I --

8 Q. (By Mr. Bogan) Well, I'm -- that was probably
9 a poorly-worded question. I meant how did you know that
10 Armory used the same ones?

11 MR. CALAWAY: Object to the form.

12 Q. (By Mr. Bogan) Or did you?

13 A. I mean, they were in the CAV. I mean, they're
14 -- I saw them, seen --

15 Q. Well, I guess what I was trying to figure out
16 is if Mr. Phagan gave you the same information that you
17 guys, you, KE Arms, gave to Brownells, which was where we
18 order our pins from. And by "we," I mean our client -- my
19 client.

20 MR. CALAWAY: Object to the form.

21 Q. (By Mr. Bogan) Did he give you the same
22 information that you gave to Brownells?

23 A. He wouldn't have given me any information I
24 didn't already know, if he did.

25 Q. (By Mr. Bogan) And where did you -- I guess my

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1 question, then, is: where did you learn that GWACS Armory
2 ordered their pins from Pivot Pin?

3 MR. CALAWAY: Object to the form. And
4 asked and answered.

5 Q. (By Mr. Bogan) where did you learn that?

6 A. I guess right here. I mean, the pivot pin is a
7 standard. I don't --

8 Q. But it's not a standard pin, though, right? It
9 may be -- it may not be a custom pin, but it's not a
10 standard pin for an AR-15 lower, right?

11 MR. CALAWAY: Object to the form.

12 A. It's used in other firearms. And it's used in
13 other AR lowers. I believe CNNG even used that pin prior
14 to one of their models.

15 Q. (By Mr. Bogan) Sir, I'm not trying to claim
16 exclusivity as to the pin. Okay?

17 A. All right.

18 Q. I'm just wondering what Mr. Phagan told you
19 because you understand your company was under an NDA when
20 he disclosed this information to Brownells. You
21 understand that, right?

22 A. Right. But that information was already in
23 public domain.

24 Q. where?

25 A. In every CAV Arms lower that was sold.

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1 Q. So every Cavalry Arms lower that was sold --

2 A. That --

3 Q. -- publicly disclosed that the pins were
4 purchased from Pivot Pin; is that what your testimony
5 under oath is today?

6 MR. CALAWAY: Object to the form. Answer,
7 if you can.

8 A. I guess I can't answer that question.

9 Q. (By Mr. Bogan) Okay. Well, you just testified
10 under oath that everybody knew, and that it came with
11 every --

12 A. No.

13 Q. (By Mr. Bogan) -- CAV-15 lower ever purchased.

14 MR. CALAWAY: Let him finish his question.

15 A. Okay.

16 Q. (By Mr. Bogan) So are you testifying today
17 that customers were informed that Pivot Pin was the
18 manufacturer of the pins that were used in the CAV-15?

19 A. No, I am not.

20 Q. Okay. How was that public knowledge?

21 A. If you're in the firearms industry and you see
22 a pin that was manufactured by Pivot Pin, you would know
23 what it was and where it came from?

24 Q. Why?

25 A. Because you had the knowledge of who

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1 manufactured the pin.

2 Q. How do you know that?

3 A. If I see a can of Coke sitting on the table,
4 and I know what Coca-Cola is, I can assume that it was
5 manufactured by Coca-Cola Company. I had that knowledge
6 as somebody in the industry.

7 Q. Okay. So Pivot Point puts a marking on their
8 pins that allows you to look at it, and know who --

9 A. It's a very distinctive --

10 Q. -- manufactured it?

11 A. It's a very distinctive pin that's used across
12 the firearms industry.

13 Q. Okay. Is there a reason that you, being KEA,
14 had to tell Brownells where Cavalry -- or where GWACS
15 Armory purchased their pivot pins if it was such common
16 knowledge in the firearms industry?

17 A. I don't know.

18 MR. CALAWAY: Object to the form. Answer
19 it.

20 A. I don't know. I didn't send this email.

21 Q. (By Mr. Bogan) what marking is on the pivot
22 pin that makes you know that?

23 A. The pin itself.

24 Q. The appearance of the pin?

25 A. Correct.

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1 Q. And so Mr. Levy is the director of product
2 management for the largest firearms manufacturer or
3 distributor in the world, right?

4 A. Correct.

5 Q. And he had to tell him that information because
6 he couldn't tell from looking at it; is that your
7 testimony?

8 MR. CALAWAY: Object to the form.

9 A. I don't know what -- I honestly don't know what
10 Paul knows or doesn't know. He may have known exactly
11 where it comes from.

12 Q. (By Mr. Bogan) Well, he does now, right,
13 because Mr. Phagan told him. Right?

14 MR. CALAWAY: Object to the form. That's a
15 statement.

16 Q. (By Mr. Bogan) Right? He knows now because
17 Mr. Phagan told him as an employee of KE Arms, right?

18 A. I don't know when he knew it to be exact.

19 MR. CALAWAY: Can we take a break or -- how
20 much longer have you got?

21 MR. BOGAN: We don't have a whole lot of
22 time if he's got to catch a flight.

23 MR. CALAWAY: I do need to take a quick
24 break.

25 MR. BOGAN: That's fine.

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1 (Whereupon, there was a recess taken.)

2 Q. (By Mr. Bogan) Okay. We're back on the
3 record. You understand you're still under oath?

4 A. Yes, sir.

5 Q. All right. Can you tell me what the
6 nonfunctional features of the KEA polymer lower, which is
7 the KP-15, what are the nonfunctional features that it
8 shares with the CAV-15 MKII?

9 A. None.

10 Q. What are the functional features it shares with
11 the CAV-15 MKII?

12 A. None that aren't shared with every AR.

13 Q. And is that the same for the MKIII which has
14 not been produced, but you've seen design work for?

15 A. I don't think I've seen the design work. I saw
16 a picture of it, but...

17 Q. Tell me about your decision, and I think we
18 touched on this earlier, so I can probably be brief. But
19 your decision to use the Mark MK3 you said was Mike Kenney
20 the third iteration.

21 A. Yeah.

22 Q. You decided to change that. And when did you
23 make that decision to change from the MKIII to the KP-15?

24 A. After our legal counsel made us aware that it's
25 owned by Ruger.

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1 Q. Do you know the date on which that decision was
2 made?

3 A. I don't specifically. But as soon as we found
4 out it was a Ruger trademark, we switched from it.

5 Q. Was that before or after you received the cease
6 and desist demand from GWACS Armory?

7 A. I honestly don't know.

8 Q. Earlier we were just talking about when Mr.
9 Phagan had told Mr. Levy that he was going to do some
10 research on September 11th, 2018, about making the KP-15.
11 You say you thought you probably had costs and things like
12 that at that time, right?

13 A. I think from reading this email, he was
14 basically just trying to say, Hey, we're here to help in
15 any way we can to try and get this project moving forward.

16 Q. I understand.

17 A. And I think at the beginning he stated that it
18 would be great if these guys could produce it first.

19 Q. I'm just going to thumb through these exhibits
20 real fast. But I think the next document I want to ask
21 you about is already an exhibit and I don't want to
22 duplicate it.

23 MR. CALAWAY: What are you looking for?
24 Maybe I can help you.

25 MR. BOGAN: It's an email. It's 8/15/19

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1 Q. Have you provided documentation of those
2 transactions?

3 A. I don't think it was requested.

4 Q. Okay. Well, I'm going to request that you
5 provide documentation of the sales direct to consumers.

6 A. I think we actually, just to clarify, I think
7 we have shown all sales related to KP-15s.

8 Q. Okay. I'm glad Mr. Nealon is still out,
9 because let's run through some confidential documents real
10 quick.

11 You produced in discovery some spreadsheets that
12 were specific to customers is what I'm going to call them.
13 And that would be RSR Group.

14 A. Uh-huh.

15 Q. A company called Wraithworks. I'm sorry,
16 Second Amendment. And I thought there was Wraithworks.

17 MR. CALAWAY: Do you need specific Bates
18 numbers? It will help you speed things up if you're
19 looking for a specific document.

20 Q. (By Mr. Bogan) So when I looked at your
21 production of the documents related to your sales, I
22 received a bunch of documents for RSR Group. Who is that?
23 Do you know? Is that a --

24 A. A large distributor of firearms.

25 Q. And then I received Second Amendment Wholesale.

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1 Are you familiar with them?

2 A. Another distributor.

3 Q. And then I received a large number of purchase
4 orders from Brownells. I received sale by item summary.
5 It doesn't appear to be Bates numbered and I think that's
6 probably because it's on an Excel spreadsheet and it came
7 through funny.

8 MR. CALAWAY: Yes, we Bates stamped these
9 separately and then reference them.

10 Q. (By Mr. Bogan) There is a cost summary. And
11 then there is a sales by month summary.

12 I don't see any documents that evidence your sale of
13 KP-15 lowers to any individuals, only through these
14 entities. Do you believe that you have provided
15 documentation beyond that that shows sales directly?

16 MR. CALAWAY: Answer if you know the
17 answer.

18 A. I mean, could I -- could I see those documents
19 for a second?

20 Q. (By Mr. Bogan) Yeah. If you'd like. So these
21 are the Brownells purchase orders. I don't know if you
22 want to look through all those.

23 A. No.

24 Q. We're kind of crunched on time.

25 A. The summary.

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1 project down. We stopped advertising, we stopped
2 marketing.

3 Q. (By Mr. Bogan) Okay. How long?

4 A. A couple of months. We were actually -- we put
5 these gentlemen in negotiations for quite some time. We
6 felt that we would be able to get back to it after that.

7 Q. What months were those?

8 MR. CALAWAY: Object to the form.

9 A. Yeah. I'd have to look at the exact dates;
10 but...

11 Q. (By Mr. Bogan) Okay. So you sued these
12 gentlemen in April of 2020, right?

13 A. Correct.

14 Q. And you said that your reputation had been
15 damaged and that you had suffered damages --

16 A. Correct.

17 Q. -- with Brownells?

18 A. Correct.

19 Q. How did you stop advertising and suffered
20 damages in those -- let's call it a week from the time
21 that they, Brownells, received the cease and desist email
22 and you sued them?

23 A. We actually slowed down our whole marketing
24 campaign for months after that.

25 Q. Yeah. After you sued them?

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1 A. Yes.

2 Q. Yeah. So how were you damaged from slowing
3 down your marketing after -- when you had already sued
4 them? You sued them saying you've been damaged. But how
5 were you damaged if you hadn't slowed your marketing down
6 yet because it was only a matter of days after Brownells
7 got the email?

8 A. We were launching a new product. Our customers
9 were going along with the build cycle and how it was being
10 developed.

11 Q. Uh-huh.

12 A. As we were doing that, we were taking
13 pre-sales. We stopped all of that. And we have a damage
14 expert that's come in and reviewed all of that. And I
15 think you have all that information.

16 Q. Yeah. Yeah. I understand that. But I want to
17 know what your basis is. Because I don't know if your
18 damage expert realizes that within days of that email
19 being sent to Brownells, you sued these people.

20 MR. CALAWAY: Object to the form.

21 Q. (By Mr. Bogan) So I don't know what your
22 expert has. And of course, your expert is paid by you,
23 and is looking at it from your point of view -- if he --

24 MR. CALAWAY: Object to the form.

25 Q. (By Mr. Bogan) If he didn't say what you

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1 wanted him to say, I can promise you you would have
2 another expert. So I'm wanting to know what your
3 knowledge and your basis is for the allegations that you
4 put in a lawsuit against these gentlemen.

5 MR. CALAWAY: Object to the form.

6 A. I'm not a damage expert. That's why we hired
7 one.

8 Q. (By Mr. Bogan) I would agree with that because
9 you certainly did not suffer damages from lack of
10 advertising in a matter of a week after Brownells received
11 it, right?

12 MR. CALAWAY: Object to the form. If you
13 understand it.

14 A. Is that a question?

15 Q. (By Mr. Bogan) Yeah.

16 A. It feels more like a statement to me. Like I
17 said, you can check the damage report.

18 Q. I don't care what the damage report says, sir.
19 I'm asking you. You have sued these people. And in fact,
20 in your counterclaims, do you know the number you put on
21 that?

22 A. In the millions, I would imagine.

23 Q. \$2.5 million in revenue you claim you lost. Do
24 you know what that number is now?

25 A. Approximately 400,000.

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1 Q. Quite a big difference, isn't it?

2 MR. CALAWAY: Object to the form.

3 A. We limited it to just the Brownells' exposure.

4 Q. (By Mr. Bogan) Because that's the only
5 exposure you've alleged, right?

6 A. I don't think it's the only exposure we
7 alleged. But it's the focus of this.

8 Q. How much revenue have you generated from the
9 KP-15?

10 A. Approximately \$3 million.

11 Q. How much revenue did you generate in 2018?

12 A. Less than \$3 million.

13 Q. Less than \$2 million?

14 A. How than \$2 million.

15 Q. About 2019?

16 A. Less than \$2 million.

17 Q. Because '19 was a pretty rough year, wasn't it?

18 A. Everything after Trump got elected was pretty
19 rough in the firearms industry.

20 Q. And then in 2020, you did four million, right?

21 A. The paper says that's what we did.

22 Q. And three million of that was the KP-15.

23 A. No, the KP-15 sales are to date; it includes
24 both years.

25 Q. How much of that was in 2020?

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1 allowed to do that. We even gave more time for that to
2 happen. It was fine. But you filed that claim and you
3 added this claim, right?

4 A. I think -- yes, if you're stating that.

5 Q. So it says here that "Anderson, on behalf of
6 all the counterdefendants made false, defamatory and
7 disparaging statements regarding KEA when he falsely
8 informed the potential customers/distributors..." plural,
9 you've only got one, right, Brownells? We can get through
10 that pretty quick.

11 A. Yes.

12 Q. Okay. "...that KEA had breached the NDA and
13 that KEA's receiver violated GWACS' intellectual property
14 rights. These false, misleading and disparaging statement
15 injured KEA's business reputation among KEA's potential
16 customers, distributors," plural again. But correct that
17 and say it's just Brownells, right?

18 A. That's who they notified but them doing that
19 would jeopardize our relationship with our other
20 distributors as well.

21 Q. Okay. But they didn't provide false or
22 misleading information to anybody according to you other
23 than Brownells, right?

24 A. Correct.

25 Q. Okay. And you said that they made --

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1 in any companies. would you consider yourself an Investor
2 in Tool Design Group?

3 MR. CALAWAY: Object to the form.

4 A. I did not say that I did not invest in any
5 other companies. I said I limited how I invested in other
6 companies.

7 Q. (By Mr. Bogan) I believe you said you own what
8 you invest in.

9 A. And I own a third of this.

10 Q. Tell me what damaged your reputation. I
11 understand that advertising curtailment is the basis for
12 your damages. But what happened to your reputation? Tell
13 us about that. Tell the jury how your reputation with
14 Brownells was damaged.

15 MR. CALAWAY: Object to the form.

16 A. well, they -- going to one of our larger
17 distributors, and making a claim as they did is not
18 something that they would lightly. We were very concerned
19 with losing all of our business, not just business related
20 to KP-15 as Brownells is the largest distributor across
21 our entire platform. And the fact that they had done
22 this, we were concerned that they might would go out and
23 publicly make these statements as well.

24 Q. But they didn't, to your knowledge, publicly
25 make these statements, right?

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1 MR. CALAWAY: Object to the form of the
2 question.

3 A. I don't know what they have or haven't done.

4 Q. (By Mr. Bogan) Okay. Well, my question is:
5 How was your reputation and/or relationship with Brownells
6 damaged? We all agree that you've done more business with
7 Brownells now than you did before, right?

8 A. We worked through this for sure.

9 Q. So there's -- there's been no damage to your
10 reputation that they caused you to suffer a monetary loss,
11 right?

12 A. There was. We have been able to repair that.

13 Q. What was the monetary loss from the damage to
14 your reputation?

15 MR. CALAWAY: The expert says it's
16 approximately \$400,000.

17 Q. (By Mr. Bogan) That's your advertising
18 curtailment. Who made the decision to curtail
19 advertising?

20 A. I did.

21 Q. Okay. Not Brownells?

22 MR. CALAWAY: Object to the form.

23 Q. (By Mr. Bogan) So you -- you made the decision
24 to curtail advertisement. Brownells took no adverse
25 action against you as a result of this, right?

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1 A. Not long-term.

2 Q. what was the short-term adverse consequences?

3 A. we all stopped marketing and advertising this.
4 we all stopped.

5 Q. I'm not asking you that. I'm saying what was
6 the damage to your reputation? Not your advertising. I'm
7 talking about the damage to your reputation with
8 Brownells. You haven't suffered any losses from it, have
9 you?

10 MR. CALAWAY: Object to the form. And
11 asked and answered.

12 Q. (By Mr. Bogan) So -- so none? Your answer is
13 none?

14 A. You can answer the question. I already
15 answered it.

16 Q. well, is that your answer? Is that your
17 answer?

18 MR. CALAWAY: Object.

19 Q. (By Mr. Bogan) I mean, I'm trying to get done
20 here. But we're not going to get done if you can't give
21 me a straight answer. And you're saying short term it was
22 damaged, long term you've been able to repair it. I want
23 to know what your short term damages were.

24 MR. CALAWAY: I object to the form.

25 Q. (By Mr. Bogan) You've sued these people for

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1 hundreds of thousands of dollars.

2 MR. CALAWAY: He's told -- and asked and
3 answered. Object to the form.

4 Q. (By Mr. Bogan) Okay. would you like to tell
5 it again so, hopefully, you can make your flight, sir?
6 How was your reputation damaged with Brownells as a result
7 of the April 21st, 2020, --

8 A. Everything that we were doing with Brownells
9 was put on hold.

10 Q. For how long?

11 A. We would have to go back and look at the
12 records. But we had it -- we have given this information
13 over to our damage expert so he could quantify that.

14 Q. I understand what your damage expert is saying,
15 sir. I'm asking you as a representative of KEA how your
16 reputation with Brownells was damaged. From what I've
17 seen, your business with Brownells has only increased
18 since that day.

19 A. No.

20 MR. CALAWAY: Object to the form.

21 A. It plateaued, and then increased from that day.

22 Q. (By Mr. Bogan) You did not have a product on
23 the date the email was received by Brownells, correct?
24 You did not have a product to sell?

25 MR. CALAWAY: Object to the form.

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1 Q. (By Mr. Bogan) Correct?

2 A. We were taking pre-orders.

3 Q. And what were you doing to advertise the
4 product that you stopped doing before April 21st and after
5 April 21st? What did you stop doing?

6 MR. CALAWAY: Object to the form.

7 A. We stopped doing daily to weekly updates to the
8 customer base.

9 Q. (By Mr. Bogan) Okay. So you reduced your
10 customer updates. How were you updating customers?

11 A. Through social media, through posts, through --
12 I mean, numerous ways.

13 Q. Okay. How long did you stop those updates?

14 A. I would have to go back and get that actual
15 information, but weeks.

16 Q. Did you go to zero?

17 A. Yes.

18 Q. For weeks?

19 A. Yes.

20 Q. Not months, weeks?

21 MR. CALAWAY: Object to the form.

22 Q. (By Mr. Bogan) You know, your expert gave me a
23 range to like December. So that's problematic.

24 A. No.

25 Q. So weeks you stopped your advertising which was

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1 updating customers on the progress of the project?

2 A. Actually, we stopped a number of things. We
3 stopped development on other products, we stopped the --
4 for, like I said, I would have to go look at all of it.
5 But we stopped --

6 Q. Well, I've asked you to be here today to talk
7 your damages. Okay? So I need you to be able to tell me.

8 A. We stopped contacting other manufacturers for
9 variances, that we knew this would be problematic with.
10 There's, you know, a lot of different things that were
11 curtailed during this time.

12 We have had experiences with other distributors that
13 would have taken this product on. We actually have --

14 Q. Well, now, that's a result of the lawsuit,
15 right? Not the email. I'm talking about the email.

16 MR. CALAWAY: Object to the form. You're
17 arguing with him on his answers. He's answering your
18 questions.

19 MR. BOGAN: Well, I'm asking -- I'm trying
20 to ask him to clarify --

21 MR. CALAWAY: If you want to --

22 MR. BOGAN: Counsel, I'm trying to get
23 through this. Please stop.

24 Q. (By Mr. Bogan) I'm asking you what your
25 damages were from the email. You said other people you

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1 could have contacted for a variance, you didn't. That's
2 because of the lawsuit --

3 A. No.

4 Q. -- that you already had filed by that point.
5 Right?

6 MR. CALAWAY: Object to the form.

7 Q. (By Mr. Bogan) Is that -- there was -- you had
8 already filed a lawsuit by that point when those decisions
9 were made on the variance, correct?

10 MR. CALAWAY: Object to the form.

11 A. What has -- the lawsuit was filed based off of
12 their actions. Their actions, because we knew there was
13 an issue out there, curtailed us being able to go out and
14 sell and market it.

15 Q. (By Mr. Bogan) That was your decision not to
16 sell and market it, because they had made a demand on you,
17 though, right?

18 MR. CALAWAY: Object to the form.

19 A. Because of their actions, we knew that we would
20 not be able to effectively market and advertise this if
21 there was a problem over this.

22 Q. (By Mr. Bogan) Okay. But at that point all
23 they had done was send an email to Brownells. So all this
24 speculation of what could have happened is irrelevant.

25 A. Which is why we've limited our damages to what

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1 million in revenue.

2 And he's telling me that that is based on an expert
3 report which isn't responsive, and is not evidence. He's
4 telling me that it is based on the decision not to seek
5 variances with other companies before your product even
6 existed, and you didn't get a variance until a year later.

7 MR. CALAWAY: What are you doing here, Man?
8 You're just yelling.

9 MR. BOGAN: I'm going over what he said.

10 MR. CALAWAY: All you're doing is
11 testifying. If you have a question, ask my client so he
12 can answer the question.

13 MR. BOGAN: That's what I'm asking him.
14 And that's what -- you asked me --

15 MR. CALAWAY: I didn't hear a question
16 there. I heard a --

17 MR. BOGAN: It was a response to you,
18 Counsel. So if you would like to stop talking and object
19 to form, I will continue.

20 MR. CALAWAY: Okay.

21 Q. (By Mr. Bogan) So let's go back to your
22 damages resulting from the April 21st, 2021, email. How
23 were you damaged by that? How did that impact variances
24 with other companies other than Brownells, the email that
25 was sent to Brownells? How did that impact variances with

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1 other companies?

2 A. We discussed with other companies having a
3 variance. We told them the situation that we were in
4 based off of this email. And we know from prior working
5 with them that they would not enter into a variance on a
6 project that had a cloud over it. And in some cases, they
7 told us as such, and said come back and see us when this
8 is finalized.

9 Q. Okay.

10 A. We're still sitting here today, a year and a
11 half later. It hasn't been finalized. The gun rush is
12 over. And potentially tens of thousands of lowers that
13 could have been sold to those guys haven't been sold.

14 Q. Okay. Thank you. So you told them, these
15 potential customers, about the dispute with GWACS?

16 MR. CALAWAY: Object to the form.

17 Q. (By Mr. Bogan) Right? That was your testimony
18 just now. You said "we told them."

19 A. No, no. I said because of this we have prior
20 experience with these types of issues.

21 Q. So when we read this transcript, it's not going
22 to say, "We told them about the dispute -- about the issue
23 with GWACS"?

24 A. I'm clarifying what I'm saying. We -- from
25 previous experiences understand that some of our customers

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1 would not get involved with this project while there was a
2 cloud hanging over it.

3 Q. So --

4 A. Since then, we've discussed it with them and
5 clarified that, yes.

6 Q. So you made the decision to change that because
7 you were in a lawsuit that you filed against them to seek
8 a declaratory judgment over who had rights or did not have
9 rights to the intellectual property asserted? Correct?

10 MR. CALAWAY: Object to the form.

11 A. I would have to hear the question again. I --
12 what did you say?

13 Q. (By Mr. Bogan) You are saying that because you
14 filed a lawsuit against GWACS Armory to seek a declaratory
15 judgment as to who owned what intellectual property
16 rights, you are saying that is what caused you not to seek
17 variances, or is because they sent a single email --

18 A. What I'm saying is --

19 Q. -- to a single customer or distributor?

20 MR. CALAWAY: Object to the form.

21 A. Because they made a false accusation and false
22 claims. And they disparaged our company, our initial suit
23 to them was for them disparaging our company because we
24 knew that there was going to be legal discussions over
25 this whether it was the negotiations we entered into

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1 initially in good faith or whether it was a lawsuit
2 long-term. We knew that existing customers would not
3 enter into variances.

4 Q. (By Mr. Bogan) Okay. But the reason there was
5 a lawsuit at the time of this allegation was because you
6 filed it, correct?

7 A. Because they had damaged our company.

8 Q. But they sent an email to Brownells, right?

9 A. Correct.

10 Q. Okay. So you're the one who filed the lawsuit
11 which put the cloud over your company. Am I wrong?

12 A. You're wrong.

13 Q. Okay.

14 A. Your client was the one that attacked our
15 company.

16 Q. To a single distributor, Brownells, who was
17 involved in the WWSO Project, and knew that we owned the
18 CAV-15, MKII, right?

19 A. They don't know that.

20 MR. CALAWAY: Object to the form.

21 Q. (By Mr. Bogan) Okay. What other losses have
22 you suffered as a result of deceptive trade practices by
23 -- are there any other damages you've suffered as a result
24 of alleged deceptive trade practices, whether it be to
25 your reputation or otherwise, by GWACS Armory, Russ

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CERTIFICATE

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss.

I, Linda Fisher, a Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public in the State of Oklahoma, do hereby certify that on the 27th day of October, 2021, at the law offices of Hall, Estill, Hardwick, Gable, Golden & Nelson, 320 South Boston Avenue, Suite 200, Tulsa, Oklahoma, pursuant to Federal Rules of Civil Procedure, appeared the above witness, MICHAEL ERIC KENNEY, who was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, and that the deposition by him was reduced to writing by me in stenograph, and thereafter transcribed by me, and is fully and accurately set forth in the preceding pages.

I do further certify that I am not related to nor attorney for any of the said parties, nor otherwise interested in the event of said action.

WITNESS my hand and official seal this 8th day of November, 2021.


Linda Fisher, CSR-RPR #866